

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2020-02558

DIVISION “ M ”

CAJUN CONTI LLC, CAJUN CUISINE 1 LLC, AND CAJUN CUISINE LLC D/B/A
OCEANA GRILL

VERSUS

CERTAIN UNDERWRITERS AT LLOYD’S, LONDON, ET AL.

FILED: _____

DEPUTY CLERK

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO SUBPEONA
RODERICK “RICO” ALVENDIA UNDER CODE OF EVIDENCE ARTICLE 508**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC dba Oceana Grill, who file respectfully this opposition to Certain Underwriters at Lloyd’s, London’s (“Defendant” or “Lloyd’s”) Motion to Subpoena Roderick “Rico” Alvendia under Code of Evidence Article 508 (“Motion”). Oceana purchased property and business income insurance to ensure the livelihood of its owners and employees should its business operations cease or slowdown, including viral contamination.

Prior to the issuance of COVID-19 civil authority orders, the insurance industry disbursed misrepresentations of coverage for viral pandemics and contaminations, seeking to exclude coverage through omissions in the construction of civil authority orders – contradicting the intent of the authors of Lloyd’s policy. The sequence of events surrounding this matter evidence no wrongdoing by Mr. Alvendia in his exposure of the insurance industry’s scheme to deny coverage:

- In July 2006, the author of Lloyd’s policy admits to the Louisiana Department of Insurance that virus can result in insurance coverage for business interruption;
- On March 11, 2020, counsel for Lloyd’s and the industry circulates a memo contradicting the 2006 filings, now claiming viruses are not covered by insurance policies and coverage for civil authority order restrictions omitting same can be denied;
- On March 15, 2020, Mr. Alvendia disclosed the industry’s misrepresentations and intent to deny coverage due to omission in the construction of the Mayor’s Orders to the Mayor’s Executive Counsel; and
- On March 16, 2020, Mayor Cantrell issued an Order which rejects and accepts some of the proposed language advocated for by Mr. Alvendia to her Executive Counsel.

In Mr. Alvendia’s disclosures and advocacy for language supporting policyholder rights in the Mayor’s March 16, 2020 Order, he sought to protect thousands of Louisiana businesses.

Policyholder advocates throughout the nation have communicated with elected officials to promote policyholder rights and dispel the insurance industry's misrepresentations. Insofar as Mr. Alvendia informed the Mayor's Executive Counsel of the industry's misrepresentation of the public health issue and dangerous physical condition caused by SARS-CoV-2, no wrongdoing has occurred. Moreover, Mr. Alvendia's advocacy work on behalf of policyholders is not relevant to the issues before this Court, nor essential. A finding to the contrary would open the proverbial flood gates to the relevancy of all advocacy and lobbying work on the local, state, and national level, creating potentially disastrous precedence. As demonstrated below, Defendants' have not and cannot satisfy the burden of proof imposed by the Code of Evidence Article 508 and Louisiana Code of Civil Procedure Article 1452(B), in order to compel Plaintiffs' counsel to testify or respond to discovery. Therefore, Defendants' Motion must be denied.

FACTUAL BACKGROUND

I. In 2006, the author of Lloyd's policy submitted a filing to Louisiana officials admitting that a claim for business interruption can be made due to a virus contaminating buildings and property.

Historically, the risk of loss due to virus or pandemic is a covered cause of loss under all-risk policies, as evidenced by the payment of business interruption losses due to virus during the 2003 Severe Acute Respiratory Syndrome (SARS) pandemic caused by SARS-CoV. (*See* Plaintiffs' Second Supplemental and Amended Petition for Declaratory Judgment ("Petition") ¶7-9). After SARS, the insurance industry moved to exclude losses stemming from virus or pandemic through endorsement forms to be added to standard policy forms, such as the commercial property forms issued to Oceana. (*See* Petition ¶10). As the business of insurance is regulated by states department of insurance and their insurance commissioners, policy forms that affect coverage, and in turn may alter rates, must be approved by the state's insurance regulators.

The Insurance Services Office, Inc. ("ISO") provides advisory services and information to many insurance companies, including the Defendants, as well as develops and publishes policy language and forms utilized by insurers.¹ Indeed, all coverage forms in the policy issued by Defendants to Oceana were authored by ISO, the copyright owner. (*See* Policy in Petition Exhibit 1). In 2006, after the SARS pandemic, ISO contacted members associated with the Louisiana Insurance Department to submit a new endorsement seeking to exclude losses due to virus or bacteria.² ISO published an ISO Circular, which provides insurers who utilize their products with

¹ *See* <https://www.verisk.com/insurance/about/faq/>.

² *See* ISO July 6, 2006 Circular attached as Exhibit 1.

“critical business intelligence you need to stay informed of [ISO] product, news, actuarial analysis, and industry development” and “helps you discover why a form filing was made, what ISO content is changing and the potential impact of that form filing on a line of business.”³ The ISO circular would be readily available the Defendants as an ISO’s consumer.⁴ Therein, the ISO Circular provides the following:

Disease causing agents may render a product impure (change its quality or substance) or enable the spread of disease by their presence on interior building or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, **potential claims involve the cost of replacement of property (for example, the milk), costs of decontamination (for example, interior building surfaces), and business interruption (time element) losses.** (emphasis added)

With this admission that a virus causes physical loss or damage to property, the endorsement was allowed to be utilized in Louisiana to modify commercial property coverage part forms, excluding virus as a cause of loss in all-risk policies. Approved endorsement forms are not included in policies automatically, rather; they must be specifically included in each insurance policy. (*See* Petition ¶11). As a result, Louisiana policies were issued with and without the endorsements through variations of underwriting, providing different coverages to Louisiana insureds. (*See* Petition ¶12-13). Therefore, all-risk policies without an endorsement modifying the coverage in the commercial property forms provide coverage for the physical loss or damage by viruses. In the instant matter, Oceana specifically sought expansive full coverage and paid a high premium for a policy without a virus or bacteria exclusion.⁵

II. In 2020, Counsel for Lloyd’s issued a public memo implying that if civil authority orders did not mention that a virus contaminates buildings and property, the industry can deny the 2006 admission.

In early 2020, the Coronavirus pandemic, caused by the virus SARS-CoV-2, ravaged communities and businesses across the U.S., changing the landscape of people’s daily lives and operations. However, Oceana purchased business interruption insurance and had faithfully paid thousands of dollars to Lloyd’s over the years for instances such as those we face today, including over \$86,000 for the policy at issue.⁶ Notably, Oceana paid a higher rate for coverage for a Lloyd’s policy without a virus exclusion. However, Defendants, in line with the rest of the insurance

³ *See* <https://www.verisk.com/insurance/products/circulars-on-isonet/>.

⁴ *Id.*

⁵ Oceana is a restaurant who regularly serves seafood, including oysters which may contain harmful bacteria or viruses. Therefore, Oceana would not have accepted a policy which would not cover bacteria or viruses as a cause of loss as proffered by Defendants.

⁶ *See* Exhibit 1 of Petition.

industry, tactically denied coverage across the board regardless of the content of the policy or coverage it affords. The defendants and the insurance industry expertly stepped into defense mode, as it has in previous major losses, providing incorrect blanket statements for the denial of all COVID-19 business interruption losses to the media, government, and their agents and workers.

On March 11, 2020, the Zelle firm, routine counsel for Lloyd's and associated with the largest insurance industry lobbying groups, published a white paper in anticipation of COVID-19 government action in the U.S.⁷ Therein, the paper not only mischaracterized the terms "property loss or damage" to exclude loss or damage caused by a virus, but also outlined the industry's argument that civil authority coverage would be denied, regardless of the failure to use a proper virus exclusion, because civil authority orders could be classified as a reactive rather than prophylactic measure.⁸ The insurance industry sought to manipulate the intent of the authors of civil authority orders to report that the orders were not issued or based upon the dangerous physical conditions caused by the virus, including its ability to adhere to property causing a physical loss or damage. This is a direct contradiction to the 2006 Louisiana Department of Insurance submission by the authors of Lloyd's policy regarding the physical loss or damage caused by viruses. Further, it advocated for the omission of the critical public health fact that a virus causes a dangerous physical property condition in civil authority orders to increase insurers bottom-lines through claim denials.

Under information and belief, this information was passed through various parts of the Defendants' operations for the denial of claims, as well as the insurance industry as a whole. Indeed, Affiliated FM Insurance Company created an outline of "Talking Points" to ensure AFM's adjusters reach the same conclusion to deny coverage across all COVID-19 claims regardless of each insureds' policy language.⁹ Under information and belief, Defendants have disbursed similar guidelines to all claims handling associates, including employees of the North American Risk Association who "handled" Oceana's claim. Such misinformation was quickly spread through the insurance community and picked up by the media.

⁷ See Zelle White Paper attached as Exhibit 2.

⁸ *Id.*

⁹ See *Treasure Island, LLC v. Affiliated FM Insurance Company*, Complaint, Case 2:20-cv-00965-JCM-EJY, May 28, 2020, Exhibit H attached 4.

III. Mr. Alventia contacted the Mayor’s Executive Counsel as a whistleblower to disclose how the insurance industry intended to use civil authority language omissions to deceive policyholders and contradict their 2006 admission to the Louisiana Department of Insurance.

Mr. Alventia is an advocate for policyholders and businessowners, whom he has actively supported throughout his professional career. Notably, he represented and advocated for insureds’ property and business interruption coverage after Hurricane Katrina in 2005, and, to date, has continued his work on behalf of policyholders. Mr. Alventia was made aware of the insurance industry’s misrepresentations on or about March 15, 2020.¹⁰ Upon Mr. Alventia’s learning of the industry’s objective to misrepresent civil authorities’ intent, on or about March 15, 2020 Mr. Alventia contacted the executive counsel of the official who would author a civil authority order for the City of New Orleans – Mayor LaToya Cantrell. Mr. Alventia requested that the Mayor consider including language detailing her reasons for issuing the order to include the known fact that a virus can cause a dangerous physical condition via property loss or damage, which is also imperative for the public to know from a public health standpoint. This is the same language presented to the Louisiana Department of Insurance by the author of Lloyd’s policy.

Mayor Cantrell and her executive team are seasoned in filtering messages from advocates and lobbyist on various issues affecting her constituents. Mr. Alventia’s suggestion was not an order to the Mayor and, under information and belief, the Mayor did not blindly follow only one voice in drafting an order that would affect thousands of businesses. Indeed, the opposite is evident. As provided in the March 13, 2020 Governor’s Task Force Louisiana Novel Coronavirus 2019 (COVID-19) Preparedness and Response Plan, Louisiana’s officials had already identified the need to “protect life **and property**,” as their first strategic goal prior to Mr. Alventia’s advocacy.¹¹ Further, while the Mayor may have considered Mr. Alventia’s information, the language in her Order varied in key phrasing which substantively modified the meaning of the clause¹²:

March 15, 2020 Text	March 16, 2020 Emergency Order
“This order is given because of the propensity of the virus to spread person to person AND also because the virus physically is causing property loss and damage due to its propensity	WHEREAS, there is reason to believe that COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to

¹⁰ Mr. Alventia was not counsel for the Plaintiff on or about March 15, 2020. Mr. Alventia was not retained or involved in this matter until on or about July 17, 2020. Nevertheless, Mr. Alventia has always supported New Orleans businesses and advocated for policyholders’ rights.

¹¹ See NOLA Request No. 20-2624 015 as Exhibit A of Defendant’s Motion.

¹² Compare Defendant’s Exhibit A and D.

to attach to surfaces for prolonged periods of time.”	person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances;
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It is undeniable that Mr. Alvendia is a policyholder advocate that participated in the discussion of the misinformation circulated by the insurance industry, supporting the counter-lobbying efforts on behalf of policyholders through his advocacy.

IV. The insurance industry and policyholder advocates have both solicited local, state, and federal officials regarding the issue of COVID-19 business income and civil authority coverage before the Court.

In addition to legal experts, the insurance industry also hired a crises management team as they spoke to various lawmakers and insurance departments across the various states and federal government, including Louisiana officials.¹³ Aligning with and on behalf of the Defendants, various agents of the insurance industry misrepresented coverage issues and opposed the factual realities offered by policyholders, the authors of the policy, and Plaintiffs.

Businessowners and policyholder advocacy groups were notified and informed of the concerted effort by the insurance industry to misrepresent the coverage afforded by policies without a virus exclusion to elected officials. As a response to this lobbying charge, members of the community and several non-profits 501(c)(3), such as the United Policyholders¹⁴ and Business Interruption Group stepped in to help dispel the profuse amount of misinformation. The Business Interruption Group was formed by leaders of the restaurant industry with the mission to help thousands of businesses as they struggle to survive amid the pandemic, and fight for fair and equitable solutions to ensure small and mid-size businesses receive the insurance coverage they purchased to keep their doors open.¹⁵ Since its creation, the group has grown as a coalition of thousands of businesses, big and small, as well as associations such as the Independent Restaurant Coalition, Culinary Institute of America, National Independent Venue Association, and Times Square Alliance, among others, standing together to insist insurers pay owed business losses caused by COVID-19.¹⁶

¹³ See <https://www.insurancejournal.com/news/national/2020/04/13/564463.htm>.

¹⁴ See <https://www.uphelp.org/>.

¹⁵ See <https://werbig.org/>.

¹⁶ *Id.*

Indeed, both the Plaintiffs' and Defendants' interest were represented through the insurance industry and advocacy groups as they contacted lawmakers across the nation and in Louisiana. In many cases, lawyers or executive counsels were directly contacting various entities in lobbying and advocacy efforts across the nation due to the importance of the COVID-19 and the effects of the COVID-19 pandemic. Mr. Alvendia was a part of this effort. Oceana and its employees are part of the 15.6 million American workers in the restaurant industry who contribute over \$1 trillion to the economy annually, the largest private sector in the U.S. COVID-19 has devastated the restaurant industry. The insurance coverage issue in this suit is of such great importance that the President of the United States issued the following statement on April 14th after being briefed on the issue¹⁷:

You have people that have never asked for business-interruption insurance and they have been paying a lot of money for a lot of years for the privilege of having it and then when they finally need it, the insurance company says "We're not going to give it." We can't let that happen.

Policyholder advocacy by the Business Interruption Group includes communications with the President of the United States, Speaker of the House of Representatives Nancy Pelosi, Vice-President Elect Kamala Harris, and U.S. House Committee on Financial Services Chairwoman Maxine Waters. Under information and belief, the insurance industry is also actively lobbying various lawmakers.

On May 21, 2020, policyholder advocates and large insurance industry lobbyists both testified before the U.S. House Small Business Committee regarding the issue before this Court – the business interruption coverage for viruses and what triggers civil authority coverage.¹⁸ Similarly, today, both the plaintiffs' and defendants' interest are represented before both state and federal agencies and officials, and are being considered in legislation on the issue before this Court in both state and federal levels.

Through Defendants' Motion, Lloyd's seeks to make all of the parties lobbying and advocacy efforts to the executive and legislative branch relevant to this case. If the Court deems it necessary and relevant, the Plaintiffs will comply and require the testimony of all of the entities who have made any lobbying or advocacy efforts to any official in the local, state, and federal executive and legislative branches. Plaintiffs will provide witnesses to discuss the Defendants'

¹⁷ See <https://www.claimsjournal.com/news/national/2020/04/10/296516.htm>.

¹⁸ See U.S. House Small Business Committee May 21, 2020 hearing transcript attached as Exhibit 7.

efforts in contacting any official relating to the issue before the Court, including the relevant 2006 submission to the Department of Insurance. However, the Plaintiffs do not believe this would be proper under Louisiana law.

V. Defendants' expert confirms Mr. Alvendia's disclosure to the Mayor's Executive Counsel, and the Mayor's orders, that a viral contamination of surfaces was supported in March 2020.

The Defendants' Motion attempts to attack and invalidate Mayor Cantrell's orders and credibility by providing that she was manipulated and blindly added language by Mr. Alvendia. As provided above, this is unsupported and untrue. Defendants' argument further fails by fact that the experts in this case, including Lloyd's, have testified under oath that the language in the Mayor's orders were correct.

Dr. Moyer, Plaintiffs' expert, concluded in his expert report that: "It is more likely than not that the Mayor and Governor's reasoning that SARS-CoV-2 attached to surfaces; (2) contaminates surfaces; and (3) causes property loss and damage was scientifically supported."¹⁹ Defendants attempt to misrepresent this statement to mean that Dr. Moyer found that a virus scientifically attaches to surfaces, contaminates surfaces, and causes a property loss and damage only because the Mayor provided it in her order, which is a clear manipulation of the clear meaning of the sentence. After the filing of this Motion, Defendants attempt to create evidence to support their attack on the Mayor failed at Dr. Moyer's six-hour deposition²⁰ (emphasis added):

12 Q. Paragraph 39 references the March 16th,
13 2020, proclamation from the mayor. And you quoted
14 in your report, and it reads, "There's reason to
15 believe that COVID-19 may be spread amongst the
16 population by various means of exposure, including a
17 propensity to spread person to person and a
18 propensity to attach to surfaces for prolonged
19 periods of time, thereby spreading from surface to
20 person and causing property loss and damage in
21 certain circumstances."
22 How did this proclamation by Mayor Cantrell
23 affect your opinion?
24 A. Well, this proclamation -- it affected my
25 opinion in the following way. Number one, that

¹⁹ See Dr. Moyer's Report attached as Exhibit 5.

²⁰ See Dr. Lem Moyer's November 10, 2020 Deposition Transcript attached as Exhibit 6.

1 COVID-19 was -- was a disease that was becoming
 2 increasingly prevalent given it's propensity to
 3 spread. Secondly, she described to a T the
 4 epidemiologic point of view about how it spread
 5 person to person and also surface to person.

6 Q. What about the -- the phrase "and causing
 7 property loss and damage in certain circumstances"?

8 A. Let me just find that. Oh, yeah, "causing
 9 property loss and damage."

10 That really didn't affect my opinion. It's
 11 for me to determine, based on science, whether
 12 there's loss and damage. I respect her point of
 13 view, but it really is -- I mean, my understanding
 14 of my role in this case is not to be influenced by
 15 what her perspective is, but to generate my own
 16 perspective.

Similarly, Dr. Allison Stock, Defendants' witness, provided in her deposition on November 11, 2020 that, at the time of the Mayor's orders, the language describing surface to person transmission and virus adherence on surfaces was supported.²¹ Therefore, Defendants now seek to fabricate the illusion of impropriety by omitted the facts surrounding Mr. Alvendia's advocacy in yet another 11th hour attempt to delay the instant matter. It should be noted here that on the morning of this Motion's filing, parties appeared before the Court regarding another emergency filing where Defendants failed to disclose their intent on filing the instant emergency motion regarding information within their possession.

LAW AND ARGUMENT

I. Legal Standard

"The practice of deposing attorneys of record is *greatly disfavored* in Louisiana."²² Other jurisdictions throughout the country share this view for multiple reasons, including the resulting unnecessary delays, potential harassment, and potential disqualification of the attorney.²³ "In recognition of these evils, the Legislature enacted Louisiana Code of Civil Procedure Art. 1452(B) which provides that 'no attorney of record ... shall be deposed except under extraordinary

²¹ See Dr. Allison Stock's November 11, 2020 Deposition Transcript attached as Exhibit 3.

²² *Board of Com'rs of New Orleans Exhibition Authority v. Missouri Pacific R. Co.*, 647 So. 2d 340 (La. 1994). (Emphasis added).

²³ See e.g., *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 278 F.3d 621, 628 (6th Cir. 2002); *N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83 (M.D.N.C. 1987); *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986).

circumstances and then only by order of the district court after contradictory hearing.”²⁴

Moreover, in order to demonstrate the “extraordinary circumstances” required by La. C.C.P. Art.

1452(B), the Louisiana Supreme Court has held²⁵:

[T]he movant must first show that no other practicable means are available to obtain the desired information. Accordingly, if there are other persons available who possess the information, they must be deposed first. If not, then other discovery devices, such as written interrogatories, should be employed before allowing deposition of opposing counsel. The movant must then show that the desired information is relevant, and that the need for it substantially outweighs the harms that the deposition may cause. Only after the movant has carried this burden in a contradictory hearing shall the judge order that the attorney of record submit to deposition.

Pursuant to La. C.C.P. Art. 1452(B) and applicable Louisiana Supreme Court jurisprudence, Mr.

Alvandia’s deposition must not be compelled unless Lloyd’s proves *all of the following*: 1) “no other practicable means are available to obtain the desired information”, 2) others “who possess the information” have been “deposed first” or “other discovery devices, such as written interrogatories” have been served on the proposed deponent, *and* 3) “that the desired information is relevant, and that the need for it substantially outweighs the harms that the deposition may cause.”²⁶

Additionally, Article 508 of the Louisiana Code of Evidence prohibits the issuance of any subpoena or court order to a lawyer to appear and testify in a civil proceeding unless, after a contradictory hearing, it has been determined that the information sought is not protected from disclosure by any applicable privilege or work product rule, and, among other things²⁷:

(1) The information sought is essential to the successful completion of an ongoing investigation, is essential to the case of the party seeking the information, and is not merely peripheral, cumulative, or speculative. ...

Under *Burkart v. Burkart*, Article 508 strictly limits the issuance of subpoenas or other court orders seeking to compel the testimony of an attorney relating to information obtained in the course of representing a client. 71 So. 3d 532, 538 (La. App. 1 Cir. 7/7/11). *Smith v. Kavanaugh, Pierson & Talley*, further provides that while the examination of the plaintiff’s attorney might provide an additional or easier discovery method, it does not create an extraordinary circumstance justifying an exception to the legislative policy disfavoring depositions of attorneys of record. 513

²⁴ *Board of Com'rs*, 647 So. 2d at 341 (quoting La.Code Civ.Proc. art. 1452(B), which states in full: “No attorney of record representing the plaintiff or the defendant shall be deposed except under extraordinary circumstances and then only by order of the district court after contradictory hearing.”)).

²⁵ *Id.*

²⁶ *Id.*

²⁷ La. Code Evid. art. 508(A)

So. 2d 1138, 1148 (La. 1987). Under information or belief, Defendants have not sought any other discovery method for the gathering of information they allege to be necessary, such as issuing discovery on the matter to the Plaintiffs, Mayor Cantrell in her official capacity as the signatory of the Order, or Mr. Davis, the recipient of Mr. Alvendia's advise. Moreover, Lloyd's has not proven that the information sought is relevant to the matter at hand, and it certainly has not proven "that the need for it substantially outweighs the potential harms that the deposition may cause".²⁸

Even if the standards under Articles 508 and 1452(B) could be satisfied, testimony which is not relevant *i.e.* that which would have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence," is not admissible.²⁹

II. The legal advise and disclosure to the Mayor's Executive Counsel does not alter the coverage afforded under the terms of Lloyd's policy.

Lloyd's must demonstrate that the information sought from Plaintiffs' counsel is "essential" to its case, and "not merely peripheral, cumulative, or speculative;" that the testimony or information sought is particularly described, reasonably limited, and with timely notice; not for the purpose of harassment; and which cannot be obtained through other practicable alternative means. *See* La. Code Evid. Art. 508. Lloyd's is unable to meet this heavy burden and cannot demonstrate "extraordinary circumstances" sufficient to justify Mr. Alvendia's deposition. *See* La. Code Civ. Proc. Art. 1452(B). Moreover, Defendants cannot provide how Mr. Alvendia's advocacy is relevant to any fact at issue before this Court regarding the interpretation of policy language and coverage. *See* La. Code Evid. Art. 401.

Mr. Alvendia did not manufacture evidence, he disclosed evidence that the industry admitted to in 2006 and was seeking to deny in 2020 – namely that viruses can contaminate a building or property and present a dangerous condition. These that are not and cannot be denied by the Defendants. Defendants and the insurance industry are upset because their expressed plan was to omit these facts from her orders. Mr. Alvendia disclosed the insurance industry's plan and explained the impact this omission would have on thousands of businesses in Louisiana. Indeed, Defendants' lobbyist would likely agree that political activity, including lawfully seeking to persuade governmental action or change as Mr. Alvendia did, is indisputably protected by the First Amendment. *United States v. Young*, 231 F.Supp.3d 33, 104 (M.D. La. 2017) (*citing Autor v.*

²⁸ *Board of Com'rs*, 647 So. 2d at 341

²⁹ La. Code Evid. Arts. 401, 402.

Pritzker, 740 F.3d 176, 182 (D.C. Cir. 2014); *Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489, 491 (D.C. Cir. 1967); *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 552, 103 S.Ct. 1997, 2004, 76 L.Ed.2d 129 (1983) (Blackmun, J., concurring) (“lobbying is protected by the First Amendment” (citation omitted)).

Contrary to the salacious allegations against Mr. Alvendia, he merely contacted the Executive Counsel of the Mayor to disclose exactly what the industry admitted in 2006 and to prevent the industry's plan to misuse omissions in a pending act by the Mayor. Such advocacy is lawful and constitutionally protected. As Mr. Alvendia's activities were lawful, neither his testimony nor any of the documents sought could support Lloyds' new defenses that Oceana's claims are barred by “unclean hands” or “estoppel.”³⁰ Accordingly, neither the testimony nor documents sought by Lloyd's are relevant under Article 401 or “essential” under Article 508.

III. Defendant's Motion opens the flood gates to introduction of all lobbying and advocacy efforts by any group or attorney in connection with COVID-19 insurance coverage on the local, state, and federal levels.

If the Court deems Mr. Alvendia's advocacy communications to Mayor Cantrell's Executive Counsel to be relevant and essential, all advocacy and lobbying communication submitted to the Mayor and Governor by any entity or individual are also relevant and essential in this matter. Further, as the local and state governments take direction from the federal government, all advocacy and lobbying communications regarding COVID-19 or viral insurance coverage on the federal level must be deemed relevant and essential in this matter. All advocacy and lobbying communications to the Louisiana Department of Insurance regarding COVID-19 or viral insurance coverage must also be deemed relevant and essential as the state's regulator of insurance.

Plaintiffs would welcome the opportunity to focus on the insurance industry's lobbying and advocacy communications – particularly the misinformation surrounding same. However, such information is irrelevant to this case. Further, Defendants' theory would result in findings of “unclean hands” and unethical behavior for any form of lobbying and advocacy work.

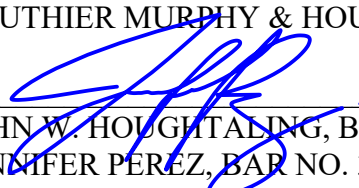
CONCLUSION

WHEREFORE, for the foregoing reasons, the Motion to Subpoena Roderick “Rico” Alvendia Under Code of Evidence Article 508 filed by defendant, Certain Underwriters at Lloyd's, London, should be denied.

³⁰ Defendant's Motion to Amend Answer to Plaintiffs' Second Amended Petition ought be denied by the Court due to procedural deficiencies as further described in Plaintiffs' pending opposition to same.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all known counsel of record by either hand-delivery, electronic delivery, facsimile transmission, or U.S. Mail, postage prepaid, this 12th day of November 2020.



JENNIFER PEREZ